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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

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IN RE: HIGH-TECH EMPLOYEE
ANTITRUST LITIGATION

Master Docket No. 11-CV-2509-LHK

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THIS DOCUMENT RELATES TO:

**DECLARATION OF LIN W. KAHN
IN SUPPORT OF DEFENDANTS'
JOINT ADMINISTRATIVE MOTION
TO FILE UNDER SEAL**

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ALL ACTIONS

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Date Consolidated Amended Compl. Filed:
September 13, 2011

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1   I, Lin W. Kahn, declare as follows:

2   1.   I am an attorney with the law firm of Jones Day, counsel for Defendant Adobe

3 Systems Inc. ("Adobe") in the above-captioned action. I am admitted to practice law before this

4 Court. I submit this declaration in support of Defendants' Joint Administrative Motion to File

5 Under Seal. As an attorney involved in the defense of this action, unless otherwise stated, I have

6 personal knowledge of the facts stated in this declaration and if called as a witness, I could and

7 would competently testify to them.

8   2.   I have reviewed the redacted portions of the Opposition to Plaintiffs' Motion for

9 Class Certification ("Opposition"), the Expert Report of Kevin Murphy, Ph.D. ("Murphy

10 Report"), the Memorandum of Law in Support of Defendants' Motion to Strike the Report of Dr.

11 Edward E. Leamer ("Motion to Strike") and the accompanying declarations and exhibits in

12 support of these documents.   The information requested to be sealed contains or summarizes

13 Adobe's compensation data, practices, strategies and policies, or references Adobe's recruiting

14 and hiring data, practices, strategies and policies. Adobe has designated this information as

15 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" pursuant to the Protective Order

16 in this case. (Dkt. No. 107).

17   3.   The October 9, 2012 Declaration of Donna Morris In Support of Defendants' Joint

18 Response to Plaintiffs' Administrative Motion to File Under Seal (Dkt. No. 196) ("10/9/2012

19 Morris Decl.") establishes that Adobe's compensation data, practices, strategies and policies, as

20 well as its recruiting data, practices, strategies and policies are confidential and commercially

21 sensitive.   As stated in the 10/9/2012 Morris Decl., it is Adobe's practice to keep such

22 information confidential, for internal use only, and not to disclose them to the public.

23   4.   Moreover, the 10/9/2012 Morris Decl. establishes that the public disclosure of this

24 information would harm Adobe, including potentially impairing its competitive position in

25 recruiting, hiring, and compensating employees. Morris declared that Adobe derives independent

26 economic value from keeping its compensation data and compensation, recruiting and hiring

27 practices, strategies, and policies confidential, including keeping it from other persons and entities

28 who could obtain economic value from its disclosure or use.

1   5.   Furthermore, as noted by Morris in the 10/9/2012 Morris Decl., the public

2   disclosure of this information, created for internal use, would give third-parties insights into

3   confidential and sensitive aspects of Adobe's operations and deprive Adobe of its investment in

4   developing these practices, strategies, and policies. The declaration further establishes that such

5   disclosure would give other entities an unearned advantage by giving them the benefit of knowing

6   how Adobe compensates employees and Adobe's compensation, recruiting, and hiring practices,

7   strategies, and policies.

8   6.   In addition to the 10/9/2012 Morris Decl., the declarations Adobe filed in support

9   of the Opposition to Plaintiffs' Motion for Class Certification also establish the confidentiality of

10   these documents and the information contained therein. In particular, the Declaration of Donna

11   Morris of Adobe Systems Inc. in Support of the Opposition to Plaintiffs' Motion for Class

12   Certification ("11/9/2012 Morris Decl."), paragraph 3, establishes that Adobe's salary and

13   compensation data, policies and strategies are confidential and that public dissemination of that

14   information could cause Adobe competitive harm. The Declaration of Jeff Vijungco of Adobe

15   Systems Inc. in Support of the Opposition to Plaintiffs' Motion for Class Certification ("Vijungco

16   Decl."), paragraph 3, similarly establishes that Adobe's recruiting and hiring data, policies and

17   strategies are confidential and that public dissemination of that information could cause Adobe

18   competitive harm. Both the 11/9/2012 Morris Decl. and the Vijungco Decl. establish that the

19   information contained therein are confidential and commercially sensitive.

20   7.   Specifically, Adobe seeks to keep the following redacted portions of the

21   Opposition, Murphy Report and accompanying exhibits under seal, all of which have been

22   designated by Adobe as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY":

23   **Opposition**

24   a.   Footnote 2 references and quotes ADOBE_023747, a confidential

25   presentation titled "2007 Mini Performance Focal Manager Training" that

26   contains confidential information regarding Adobe's compensation

27   practices and strategies;

28   b.   Page 6, lines 22-23 reference Adobe's compensation practices, policies,

1   and strategies;

2   c.   Page 7, lines 5-15 reference Adobe's compensation practices, policies, and

3   strategies;

4   d.   Page 7, lines 25-26 reference Adobe's compensation data for a specific

5   Adobe job code;

6   e.   Page 8, lines 11-12 reference Adobe's compensation practices, policies,

7   and strategies; and

8   f.   Page 18, lines 3-10 reference Adobe's compensation practices, policies,

9   and strategies.

10   **Murphy Report**

11   g.   Footnotes 24, 26, 35, 107, 108, 114, and 185 cites to the 11/9/2012 Morris

12   Decl. and/or Vijungco Decl. as the source of the information therein. As

13   noted above, these declarations contain Adobe's confidential and

14   commercially sensitive information. These footnotes discuss specific

15   information about Adobe's compensation and recruiting data, strategies,

16   practices and policies that is confidential to Adobe.

17   h.   Paragraph 20 discusses Adobe's compensation practices, strategies and

18   policies;

19   i.   Paragraph 21 discusses Adobe's recruiting and hiring practices, strategies

20   and policies, and cites to the Vijungco Decl.;

21   j.   Footnote 31 discusses Adobe's recruiting practices, strategies and policies;

22   k.   Paragraph 36 discusses Defendants' hiring statistics, which reflects

23   Adobe's recruiting and hiring data;

24   l.   Paragraph 39, references Adobe's recruiting and hiring practices, strategies

25   and policies, and cites to the Vijungco Decl.;

26   m.   Footnote 39 discusses Adobe's recruiting process;

27   n.   Paragraph 40 discusses Adobe's recruiting data, and cites to the Vijungco

28   Decl.;

1   o.   Paragraph 45 references Adobe's compensation practices, strategies and

2   policies;

3   p.   Paragraph 62 discusses Defendants' hiring statistics, which reflects

4   Adobe's recruiting and hiring data;

5   q.   Paragraph 81 discusses Adobe's compensation practices, strategies and

6   policies; and

7   r.   Paragraph 94 discusses Adobe's compensation and hiring data.

8   **Exhibits to Murphy Report**: The following exhibits to the Murphy Report contain

9   information derived from Adobe's confidential employee, compensation and recruiting data. This

10   information reveals Adobe's confidential compensation and recruiting methods and strategies and

11   would cause Adobe harm if publicly disseminated.

12   s.   Exhibits 1A, 1B, 2A, 2B, 3, 5, 6, 7A, 7B, 8A, 8B, 10, 13A, 13B, 14A, 14B,

13   16, 17, 18A, 18B, 19, 20, 21A, 21B, 22A, 22B, 23, 24, 25A, 25B, 26; and

14   t.   Appendices 1A, 1B, 1C, 1D, 2A, 2B, 2C, 2D, 3A, 3B, 4A, 4B, 4C, 4D, 5A,

15   6A, 7A, 8A, 8B, 9A, 9B, 10A, 10B, 10C, 11A, 11B, 11C, and 12A;

16   **Exhibits to Declaration of Christina Brown In Support of Opposition**

17   u.   Exhibit 1 to the Declaration of Christina Brown ("Brown Decl.") in

18   Support of the Opposition contains excerpts from the transcript of the

19   deposition of Dr. Edward Leamer. Page 163, lines 3-6, 10 and 13-24

20   contains confidential Adobe compensation data.

21   v.   Exhibit 14 to the Brown Decl. is the Declaration of Donna Morris of

22   Adobe Systems Inc. in Support of Defendants' Opposition to Plaintiffs'

23   Motion for Class Certification. The information contained therein

24   constitute confidential and commercially sensitive compensation data,

25   strategies, policies, and practices.

26   w.   Exhibit 15 to the Brown Decl. is the Declaration of Jeff Vijungco of Adobe

27   Systems Inc. in Support of Defendants' Opposition to Plaintiffs' Motion

28   for Class Certification. The information contained therein constitute

1   confidential and commercially sensitive recruiting data, strategies, policies,

2   and practices.

3   **Exhibits to Susan Welch Declaration in Support of Motion to Strike**

4   x.   Attached as Exhibit A to the declaration of Susan Welch in support of the

5   Motion to Strike are excerpts from the transcript of the deposition of Dr.

6   Edward Leamer. Page 76, lines 19-25, and page 163, lines 3-6, 10, 13-24

7   contain confidential Adobe hiring and compensation data.

8   I declare under penalty of perjury under the laws of the United States that the foregoing is

9   true and correct. Executed this 12th day of November 2012 in San Francisco, California.

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13   By:_____

                                    Lin W. Kahn

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Kahn Declaration ISO Motion to Seal
Master Docket No. 11-CV-2509-LHK